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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,545	03/07/2002	Thomas Perelli	086554-0774	9069
22428	7590	04/23/2004	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			SPISICH, MARK	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/091,545

Applicant(s)

PERELLI ET AL.

Examiner

Mark Spisich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
4a) Of the above claim(s) 29-35 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-28 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6.7/02 & 9.03
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of the invention of Group I (claims 1-28) in Paper filed 22 March 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 29-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper filed 22 March 2004.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 24,25,27 and 28 are rejected under 35 U.S.C. 102(a) as being anticipated by JP 2001-275910. '910 discloses a cleaning device (1) comprising a receptacle (13) including a base and opposed sidewalls from which extend means (6) for pivotally connected a handle (7). The sidewalls are substantially continuous and uninterrupted insofar as this is defined in the specification. The base and sidewalls are integrally formed (claim 25) and the handle includes engagement members (15) (claim 27) and an "implement" (4) which would enable the device to be hanged (claim 28).

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by GB 2,168,599. '599 discloses a receptacle comprising a base (1) defining a containment portion (adjacent rear wall 5) as well as a ramp portion along which debris may be slid and wherein the ramp portion includes a first location (the top surface of the member which retains the blade 1A) having a first angle of inclination less than that of a second location (the top surface of the ramp to which the lead line for #1 in fig 10 is directed) having a second angle of inclination.
6. Claims 1,4,6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by McNeil (USP 20,811). The patent to McNeil discloses a receptacle for material comprising a base defining a containment portion (a) as well as ramp portion (b) which is curved from a leading edge to a trailing edge and wherein the angle of inclination continuously increases therebetween (see fig 1) such that the angle at a "third portion" adjacent the leading edge would be less than that of a "first portion" between the leading and trailing edges and which would be less than that of a "second portion" adjacent the trailing edge of the ramp. The entire ramp portion of McNeil is a blade (claim 8).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001-275910 in view of Hanna et al (USP 6,457,844). '910 discloses the invention

substantially as claimed with the exception of the rear wall indentation. The patent to Hanna discloses a debris receptacle including a rear wall indentation (24). It would have been obvious to one of ordinary skill to have provided such an indentation to the device of '910 to prevent the receptacle from moving around during use.

9. Claims 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 11-309104 in view of Ringo (USP 3,861,730). '104 discloses a cleaning device comprising a receptacle (1) comprising a base (2) and opposed integral (claim 25) sidewalls (3) which are pivotally connected to a handle (12). The phrase "substantially continuous and uninterrupted" is broad. The patent to Ringo discloses the provision of integral trunnions (54) on the sidewalls (17) of a debris receptacle and as such do not extend into the inner surface of the sidewalls. It would have been obvious to one of ordinary skill to have modified the handle connection of '104 as taught by Ringo for ease of manufacture and such a handle mounting would clearly provide a "continuous and uninterrupted surface" on the interior of the receptacle. Figs 2 and 3 of '104 show a rear wall indentation (5) (claim 26), engagement members (8) (claim 27) and a handling implement (26) (claim 28).

10. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNeil (USP 20,811) in view of Pierce (USP 226,877). The patent to McNeil discloses the invention substantially as claimed with the exception of the rear wall indentation. The patent to Pierce discloses such an indentation (A). It would have been obvious to one of ordinary skill to have modified the device of McNeil as such to prevent to receptacle from moving during use.

11. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNeil (USP20,811). The patent to McNeil discloses the invention substantially as claimed with the exception of the specific angles, although the angles suggested by figure 1 of McNeil would at least be "in the ballpark" of those recited and that any differences between the angles of McNeil and those of claims 5 and 7 would amount to an obvious choice of mechanical design.

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over McNeil (USP 20,811) as applied to claim 8 above, and further in view of GB 2,168,599. The patent to McNeil discloses the invention substantially as claimed with the exception of the leading edge including a distinct blade element attached a front part of a sloped portion. '599 discloses a blade member (1A) secured (detachable does not itself define any structure) to a front portion of a ramp (1). It would have been obvious to one of ordinary skill to have modified the device of McNeil as taught by '599 so as to provide a leading edge which conforms to the surface being cleaned.

13. Claims 10,13-16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-165348 in view of JP 11-267081. '348 discloses a receptacle (1) comprising a base including a containment part as well as a ramp portion include a sloped portion (#11 in fig 10) and a flexible contact portion (10). '348 discloses the invention substantially as claimed with the exception of the ramp portion having at least one spacer/support. '081 discloses a similar device (dustpan) wherein the region adjacent the flexible contact portion (20) includes at least one spacer/support (21). It would have been obvious to one of ordinary skill to have provided such a spacer to the

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device of '348 in order to reinforce the leading edge and to maintain the flexible contact portion a predetermined distance from the surface. The recitation of "detachable" (claim 13) fails to define over the structure of the prior art. The spacer (21) of '081 and the trailing edge of the pan each contact the surface being cleaned and define coplanar surfaces (claim 15) and the spacer (or at least end portions thereof) (21) is located at each end of the flexible portion (claim 14). The provision of a distinct "pad" (claim 15) would amount to an obvious choice of design and the first and second spacers are essentially met by the fact that the spacer extends the full length of the flexible portion.

14. Claims 11,12,17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-165348 and JP 11-267081 as applied to claims 10 and 16 above, and further in view of Hanna et al (USP 5,457,844). The prior art discloses the invention substantially as claimed with the exception of the rear wall indentation. The patent to Hanna discloses a rear wall indentation (24). It would have been obvious to one of ordinary skill to have provided the prior art with such an indentation so that the pna would not move around during use. The phrase "adapted to function as a handle" (eg, claims 12 and 18) fails to define over the structure of Hanna.

15. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rooney (USP 14,351) in view of JP 11-267081. The patent to Rooney discloses a receptacle comprising a base having a containment portion (A), a region (D,E) defining a ramp portion, as well as first and second sidewalls (including leading spurs/hooks F) connected to opposed first and second sides of the base and further wherein the leading edge of the ramp is recessed within the sidewalls (in fact, it is entirely recessed:

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claims 21-23). The patent to Rooney discloses the invention substantially as claimed with the exception of the leading edge (E) of the ramp portion being flexible. At present, it is common in the art to provide a flexible leaning edge for a dust pan, as is shown at #20 in '081. The modification of Rooney as such would be obvious to one of ordinary skill to help maintain contact with the surface being cleaned.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited patents are pertinent to the various features of the disclosed invention, eg the pivoted handle (Finnell, Cutter), the sloping ramp (Anderson, Carlson, Jenson).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Spisich
Primary Examiner
Art Unit 1744

MS